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UNITED STATES SUPREME COURT

OCTOBER, 1991

ALANA SUDWISHER

VERSUS

ESTATE OF PAUL C. HOFFPAUIR, ET AL.

ON REHEARING BY

THE LOUISIANA STATE SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

When balancing the intrusion on an individual's Fourth Amendment interests against the State of Louisiana's interest in providing a legal framework through the use of blood tests to prove filiation, does the State's interests in compelling blood tests to obtain evidence of filiation outweigh an individual's Fourth Amendment rights to privacy?

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TABLE OF AUTHORITIES

I. CASES:

1. Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1977).

2. Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826.

II. STATUTES:

1. Civil Code Article 209 D. (b)

Proof of filiation may include, but is not limited to: "Informal" acknowledgment; scientific test results; acknowledgment in a testament; and proof

that the alleged parents lived in a state of concubinage at the time of conception.

2. LSA R. S. 9:396

STATEMENT OF THE CASE

Alana Sudwisher filed suit against the Succession of Paul C. Hoffpauir, Sr. to be recognized as a child and heir of Mr. Hoffpauir who died August 20, 1979. The mother of plaintiff Alana Sudwisher had died several years before Mr. Hoffpauir. Paul C. Hoffpauir, Sr. was married to Rose Mary Wright and of their marriage, one child, Rosemary Hoffpauir Schuh, was born and one child was adopted, Paul C. Hoffpauir, Jr. Both of these children accepted the Succession of Paul C. Hoffpauir, Sr. unconditionally.

Alana Sudwisher has alleged that when she was approximately nineteen years of age, Mr. Hoffpauir came to her and told her that he was her natural father. Thereafter, they maintained a

relationship as father and daughter until Mr. Hoffpauir sustained a stroke which eventually led to his death.

After instituting litigation to establish filiation, Alana Sudwisher filed a Motion to Compel the legitimate daughter, Rosemary Hoffpauir Schuh to submit to a DNA blood test to determine whether or not a relationship existed between the legitimate daughter, Rosemary Hoffpauir Schuh, and the plaintiff, Alana Sudwisher, the alleged illegitimate daughter of Paul C. Hoffpauir, Sr.

After denials by the District Court and Court of Appeal, the Supreme Court of the State of Louisiana ordered that Rosemary Hoffpauir Schuh submit to a DNA blood test.

SUMMARY OF ARGUMENT

The Louisiana Supreme Court properly extended its rules of discovery to compel a legitimate heir to submit to a DNA blood test in order to show a relation, if any existed, between the alleged illegitimate daughter and the legitimate daughter, Rosemary Hoffpauir Schuh.

The Louisiana Supreme Court properly determined that the interest of the State in obtaining all discoverable facts in a filiation case clearly outweighed the rights of an individual to privacy under the provisions of the Fourth Amendment.

ARGUMENT

The Supreme Court of the State of Louisiana properly applied its rules of discovery to compel a legitimate heir who had accepted an estate to submit to a DNA blood test in order to provide an illegitimate child seeking filiation the opportunity to discover evidence which might aid her in meeting the heavy burden of "clear and convincing evidence" in order to establish filiation.

The constitutional issue presented to the Louisiana Supreme Court was a balancing of the State's interest in establishing guidelines for obtaining evidence to support proof of filiation, a paramount right recognized by this Honorable Court in Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1977) and the orderly disposition of

estates against the State's intrusion on an individual's Fourth Amendment interests.

Justice Watson, in writing the majority opinion for the Louisiana Supreme Court, made it clear that the State recognized an illegitimate's right to prove filiation to be far more important than the minor intrusion on Rosemary Schuh's individual rights:

> "Alana has a constitutional right to prove filiation to a deceased father." Trimble v. Gordon, 430 U. S. 762, 97 S. Ct. 1459, 52 L.Ed. 31 (1977). That right must be weighed against the invasion of Rosemary's privacy presented by the compelled blood test. LSA-Const. Art. I, Constitutional Law in the Age of Balancing, 96 Yale L. J. 943 (1987). To compel a blood test of Rosemary, Alana's interest in identifying her father must outweigh Rosemary's expectation of privacy."

This Honorable Court in Trimble v. Gordon, 97 S. Ct. 1459 (1977) made it clear that illegitimate children have a Constitutional right to prove filiation; that a State could not, because of its concern for the orderly disposition of property, deny those rights. This Court in Trimble recognized the obligations of states to establish procedures to protect an illegitimate's rights to prove filiation and at the same time provide for an orderly disposition of property. Mr. Justice Powell:

> "The orderly disposition of property at death requires an appropriate legal framework, the structuring of which is a matter particularly within the confidence of the individual states. In exercising this responsibility, a state necessarily must enact laws governing both the procedure and substance of intestate succession.

> Absent infringement of a constitutional right, the Federal Courts have no role here, and even when constitutional violations are alleged, those Courts should afford substantial deference to a State's statutory scheme of inheritance."
> (Emphasis ours).

After Trimble, the Louisiana legislature adopted statutes providing for proof of filiation. Civil Code Article 209 was eventually amended to include scientific testing. The Uniform Act of blood tests (LA R.S. 9:396, et seq) was adopted by the State of Louisiana in order to establish a uniform procedure for implementation of blood tests. The real question for the Louisiana Supreme Court, in this case, was whether or not LA R.S. 9:396 should be extended to allow for blood testing of

an individual other than the father, mother and child as provided in the statute itself. Under the Louisiana Rules of Discovery (LA CCP Article 1422) which provides in part - "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . ." - the Louisiana Supreme Court interpreted the blood test statute to include taking blood from any individual from whom relevant evidence may be obtained.

The record presented to the Louisiana Supreme Court provided convincing evidence that a DNA blood test could show a relationship, if any existed, between Alana, the illegitimate daughter, and Rosemary, the legitimate daughter.

Justice Watson commented:

> "However, Rosemary's testing would produce relevant evidence, which could be considered by the trier of fact with other evidence in evaluation of Alana's claim."

Dr. Craig Cohen, a Geneticist, testified that through DNA testing, he could determine whether or not there was a relationship between Alana and Rosemary. Contrary to counsel's allegations in the petition for writ, Dr. Cohen did not testify that he could not guarantee the accuracy of his results. What he did say was that he could establish a certain probability that the two people were related; the degree of relationship could not be known until the tests were performed. Dr. Cohen also testified, most interestingly, that if in

fact these two people had no relationship between them, this blood test would establish that fact. For Alana seeking to establish her filiation, this test would dash all hopes and eliminate her as an heir. Alana has been willing to take that risk.

In Schmerber v. California, 384 U. S. 757, 86 S.Ct. 1826, this Court recognized that blood tests were in fact a minor intrusion of an individual's Fourth Amendment right. Blood tests today are in fact commonplace and as the Louisiana Supreme Court recognized in its ruling, the test in this case would require only several drops of blood.

CONCLUSION

Justice Watson's conclusion in the Louisiana Supreme Court's majority opinion clearly summarizes why Rosemary Schuh's writ should be denied.

Justice Watson: "Although she bears the Benoit name, Alana has never enjoyed a father/daughter relationship with Benoit. She has an overriding emotional and financial interest in knowing her father's identity. Rosemary has a financial interest in opposing Alana's claim but has asserted no physical or religious obstacle to a blood test. . ." Invasion of Rosemary's privacy is minimal. . . Rosemary has the alternative of conceding a relationship to Alana. . . ."

The State's interest in providing for an orderly disposition of property

and establishing methods of proof in filiation cases clearly justifies compelling a blood test of any party from whom relevant evidence can be found.

The State's interest in seeking the truth as to filiation clearly outweighs the individual's right of privacy under the Fourth Amendment in this case. Accordingly, the writ of application should be denied.